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8 UNITED STATES DISTRICT COURT
9 NORTHERN DISTRICT OF CALIFORNIA
10 SAN FRANCISCO DIVISION

11 IN RE: CHRYSLER-DODGE-JEEP
12 ECODIESEL MARKETING, SALES
13 PRACTICES, AND PRODUCTS
14 LIABILITY LITIGATION

No. 3:17-md-02777-EMC

STIPULATED PROTECTIVE ORDER

The Honorable Edward M. Chen

15 1. **PURPOSES AND SCOPE**

16 1.1 Disclosure and discovery activity in this Action are likely to involve production of
17 confidential, proprietary, or private information for which special protection from public
18 disclosure and from use for any purpose other than prosecuting this Action may be warranted.
19 Accordingly, the Parties hereby stipulate to and petition the United States District Court for the
20 Northern District of California (the “Court”) to enter the following Stipulated Protective Order
21 (the “Order”).

22 1.2 The purpose of this Order is to facilitate the production of discovery material,
23 facilitate the prompt resolution of disputes over confidentiality, protect material to be kept
24 confidential, and ensure that protection is afforded only to material entitled to such treatment,
25 pursuant to the Court’s inherent authority, its authority under Fed. R. Civ. P. 16 and 26, the
26 judicial opinions interpreting such Rules, and any other applicable law. Except as otherwise
27 stated in this Order, a Party shall produce, in response to a valid discovery request, otherwise
28 discoverable information in its possession, custody or control that is Confidential or Highly

1 Confidential, and such information shall be handled in accordance with the procedures set forth
2 herein.

3 1.3 This Order shall govern the practice and procedure in those actions transferred to
4 this Court by the Judicial Panel on Multidistrict Litigation (the “Panel”) pursuant to its Transfer
5 Order of April 5, 2017 (Docket No. 1), any “tag-along” actions transferred to this Court by the
6 Panel pursuant to the Panel’s Rules of Procedure, and all related actions that have been or will be
7 originally filed in, transferred to, or removed to this Court and assigned thereto.

8 1.4 This Order and all subsequent Protective Orders shall be binding on all Parties and
9 their counsel in all cases currently pending or subsequently transferred to *In re Chrysler-Dodge-*
10 *Jeep Ecodiesel Marketing, Sales Practices, and Products Liability Litigation*, MDL No. 2777,
11 and any other persons or entities who become bound by this Order by signifying their assent
12 though execution of the “Acknowledgment and Agreement to Be Bound” attached as Exhibit A
13 hereto, and shall govern each case in this MDL proceeding unless the Order explicitly states that
14 it does not apply to specific cases or that it applies only to specific cases.

15 1.5 The Parties acknowledge that this Order does not confer blanket protections on all
16 disclosures or responses to discovery and that the protection it affords from public disclosure and
17 use extends only to the limited information or items that are entitled to confidential treatment
18 under the applicable legal principles. The Parties further acknowledge, as set forth in
19 subsection 11.7 below, that this Order does not entitle them to file confidential information under
20 seal; Civil Local Rule 79-5 sets forth the procedures that must be followed and the standards that
21 will be applied when a Party seeks permission from the Court to file material under seal.

22 2. DEFINITIONS

23 The following definitions apply for purposes of this Order:

24 2.1 Action: any and all cases that have been or subsequently are consolidated into *In*
25 *re Chrysler-Dodge-Jeep Ecodiesel Marketing, Sales Practices, and Products Liability Litigation*,
26 MDL No. 2777, for pre-trial proceedings, including any “tag-along” actions transferred to this
27 Court by the Panel pursuant to the Panel’s Rules of Procedure, and all related actions that have
28 been or will be originally filed in, transferred to, or removed to this Court and assigned thereto.

1 2.2 Challenging Party: a Party or Non-Party that challenges the designation of
2 information or items under this Order.

3 2.3 Confidential Information: Discovery Material (regardless of how it is generated,
4 stored, or maintained) or tangible things that qualify for protection under Federal Rule of Civil
5 Procedure 26(c).

6 2.4 Counsel: Attorneys of the U.S. Department of Justice executing tasks and
7 responsibilities in connection with this Action, the Court-appointed Plaintiffs' Steering
8 Committee, Outside Counsel of Record, and In-House Counsel, as well as employees and support
9 staff of these categories of attorneys (including, but not limited to, paid or unpaid, temporary or
10 permanent law clerks, paralegals, and administrative or clerical personnel).

11 2.5 Designating Party: a Party or Non-Party that designates documents, information,
12 or items that it produces in disclosures or in responses to discovery as Protected Material.

13 2.6 Discovery Material: all items, documents or information, including of any Non-
14 Party, regardless of the medium or manner in which it is generated, stored, or maintained
15 (including, among other things, testimony, transcripts, answers to interrogatories, documents,
16 responses to requests for admissions, tangible things, and informal exchanges of information),
17 that are produced or generated in connection with any discovery in this Action, whether formally
18 or informally.

19 2.7 Expert: a person retained by a Party or its Counsel to serve as an expert witness or
20 consultant or technical advisor in connection with this Action (as well as his or her employees
21 and support staff).

22 2.8 Foreign Private Data: any personal or private information that a Party believes in
23 good faith to be subject to foreign (i.e., non-U.S.) data protection laws or other foreign privacy
24 obligations that would otherwise prohibit a Producing Party from disclosing such information to
25 one or more of the Receiving Parties. Foreign Private Data constitutes Highly Confidential
26 Information under the terms of this Order.

27 2.9 Highly Confidential Information: Discovery Material that (a) is Foreign Private
28 Data, or (b) meets the definition of "Confidential Information" and which the Designating Party

1 reasonably believes to be (i) information reflecting product design or development, non-public
2 technical research, pricing and business strategy documents concerning a particular product or
3 line of products, financial statements reflecting sales data, product margin data, cost and expense
4 data, and/or profit and loss data, sales information relating to specific customers or classes of
5 customers, non-public scientific research; (ii) as to any governmental Parties, information the
6 disclosure of which absent the protections afforded herein to Highly Confidential Information
7 may harm the United States or any state or foreign government's ability to investigate and/or
8 enforce applicable laws; or (iii) information the disclosure of which absent the protections
9 afforded herein to Highly Confidential Information could create a substantial risk of serious harm
10 that could not be avoided by less restrictive means. Nothing herein precludes any Party from
11 seeking additional protections not currently contemplated by this Order to be applied to any
12 particular document or category of documents, including Highly Confidential Information.

13 2.10 In-House Counsel: attorneys who are employees of a Party to this Action. In-
14 House Counsel does not include Outside Counsel of Record or any other outside counsel, or
15 counsel employed by the U.S. government.

16 2.11 Liaison Counsel: Plaintiffs' Lead Counsel, counsel for the Defendants, and
17 Government Coordinating Counsel.

18 2.12 Non-Party: any natural person, partnership, corporation, association, or other
19 governmental or legal entity not named as a Party to this Action, and their counsel.

20 2.13 Non-Party Protected Material: Discovery Materials produced by a Non-Party that a
21 Party or producing Non-Party has designated as Protected Material as defined in subsection 6.4.

22 2.14 Outside Counsel of Record: attorneys who are not employees of a Party to this
23 Action but have been retained to represent or advise a Party to this Action and have appeared in
24 this Action on behalf of that Party or are affiliated with a law firm or governmental agency which
25 has appeared on behalf of that Party.

26 2.15 Party: any party to this Action who or that has appeared, or subsequently appears,
27 in this Action.
28

1 2.16 Personally Identifiable Information: any personal or private information that a
2 Party or Non-Party believes in good faith to be subject to federal or state privacy obligations that
3 would otherwise prohibit the Producing Party from disclosing such information to one or more of
4 the Receiving Parties. Examples of such data protection laws include, but are not limited to, The
5 Gramm-Leach-Bliley Act, 15 U.S.C. § 6801 et seq. (financial information) and The Health
6 Insurance Portability and Accountability Act and the regulations thereunder, and 45 C.F.R. Part
7 160 and Subparts A and E of Part 164 (medical information).

8 2.17 Privileged Material: Discovery Material protected from disclosure under the
9 attorney-client privilege, work product doctrine, or any other privilege or protection afforded or
10 recognized by Rule 26 of the Federal Rules of Civil Procedure or Rule 501 of the Federal Rules
11 of Evidence, including any such privilege or protection under applicable U.S. or foreign law,
12 regulation, or statute.

13 2.18 Producing Party: a Party or Non-Party that produces Discovery Material in this
14 Action.

15 2.19 Professional Vendors: persons or entities that provide litigation support services
16 (e.g., photocopying, videotaping, graphic support services, coding, translating, preparing exhibits
17 or demonstrations, document review, and processing, organizing, storing, or retrieving data in any
18 form or medium) and their employees and subcontractors.

19 2.20 Protected Material: Discovery Material (regardless of how it is generated, stored,
20 or maintained) or tangible things that qualify for protection under Federal Rule of Civil
21 Procedure 26(c) and that has been designated as Confidential Information or Highly Confidential
22 Information in accordance with the provisions of this Order.

23 2.21 Receiving Party: a Party that receives Discovery Material from a Producing Party.

24 2.22 Submitting Entity: any entity or individual that has submitted information to the
25 United States which the entity or individual claims is protected from public disclosure, or which
26 the United States has informed the entity or individual would be protected from public disclosure
27 by applicable federal law.
28

1 3. SCOPE

2 3.1 The protections conferred by this Order apply to Protected Material (as defined
3 above) and also (1) any information copied or extracted from Protected Material; (2) all copies,
4 excerpts, summaries, translations, or compilations of Protected Material; and (3) any oral, written,
5 or electronic communications, testimony or presentations, including for purposes of settlement,
6 by Parties or their Counsel that might reveal Protected Material. However, the protections
7 conferred by this Order do not cover information that is in the public domain at the time it is
8 disclosed to a Receiving Party or becomes part of the public domain after its disclosure to a
9 Receiving Party as a result of publication not involving a violation of this Order. Nevertheless,
10 information that is in the public domain may otherwise be designated as Confidential or Highly
11 Confidential under this Order and subject to the protections of this Order if the Designating Party
12 notifies the other Parties that it believes that the information is in the public domain as a result of
13 improper or unlawful actions and that it either has instituted, or, within 10 calendar days, will
14 institute, steps to protect the information, including attempting to have the information removed
15 from the public domain.

16 3.2 This Order and its protections apply for pre-trial purposes only. The Parties will
17 meet and confer at the appropriate time regarding any use of Protected Material at trial, which use
18 shall be governed by a separate agreement or order.

19 3.3 Nothing in this Order shall prevent or restrict a Producing Party's own disclosure
20 or use of its own Protected Material for any purpose.

21 3.4 Nothing in this Order prohibits the United States from using or disclosing, for
22 purposes other than this litigation, documents or information that the United States obtains
23 outside of this litigation, subject to any confidentiality restrictions outside of this litigation that
24 govern those documents or information.

25 3.5 This Order is without prejudice to the right of any Party to seek further or
26 additional protection of any Discovery Material or to seek a modification of this Order.

1 4. DURATION

2 4.1 Even after final disposition of this Action, the confidentiality obligations imposed
3 by this Order shall remain in effect until a Designating Party agrees otherwise in writing or a
4 court order otherwise directs. Final disposition shall be deemed to be the later of (1) dismissal of
5 all claims and defenses in this Action, with or without prejudice; or (2) final judgment herein after
6 the completion and exhaustion of all appeals, rehearings, remands, trials, or reviews of this
7 Action, including the time limits for filing any motions or applications for extension of time
8 pursuant to applicable law.

9 5. DESIGNATING PROTECTED MATERIAL

10 5.1 If a Producing Party has a good faith belief that Discovery Material qualifies for
11 protection under Rule 26(c) of the Federal Rules of Civil Procedure, the Producing Party may
12 designate such Discovery Material as Confidential Information or Highly Confidential
13 Information by marking such Discovery Material in accordance with subsection 5.4.1.

14 5.2 A Producing Party may also designate Discovery Material as Confidential
15 Information or Highly Confidential Information where the Discovery Material: (1) has not been
16 subject to a full page-by-page review for information that may qualify for protection under
17 Federal Rule of Civil Procedure 26(c); and (2) was obtained from a source that may contain
18 information that may qualify for protection under Federal Rule of Civil Procedure 26(c).

19 5.3 Manner and Timing of Designations. Except as otherwise provided in this Order
20 (*see, e.g.*, subsection 5.4.4 below), or as otherwise stipulated or ordered, Discovery Material that
21 qualifies for protection under this Order must be clearly so designated at the time the material is
22 disclosed or produced. The Parties shall make Confidential and Highly Confidential designations
23 in good faith to ensure that only those documents or testimony that merit Confidential or Highly
24 Confidential treatments are so designated. Either designation may be withdrawn by the
25 Designating Party. A Producing Party may revoke its designation of Discovery Material as
26 Confidential Information or Highly Confidential Information by providing another copy of such
27 Discovery Material without the markings required by subsection 5.4.1. The Producing Party must
28 revoke its designation of Discovery Materials as Confidential Information or Highly Confidential

1 Information if he, she or it intends to use the materials in litigation and determines that such
2 Discovery Materials do not contain Confidential Information or Highly Confidential Information.
3 If it comes to a Designating Party's attention that information or items that it designated for
4 protection do not qualify for protection, the Designating Party must promptly notify all other
5 Parties that it is withdrawing the mistaken designation.

6 5.4 Designation in conformity with this Order requires the following:

7 5.4.1 *Marking*. All or any part of a document, image file, tangible thing,
8 discovery response, or pleading disclosed, produced, or filed by a Producing Party may be
9 designated as Confidential Information or Highly Confidential Information, by branding each
10 page or image with the words, as applicable, "CONFIDENTIAL – SUBJECT TO
11 PROTECTIVE ORDER (MDL 2777)" or "HIGHLY CONFIDENTIAL – SUBJECT TO
12 PROTECTIVE ORDER (MDL 2777)." With respect to tangible items, the appropriate
13 legend shall be marked on the face of the tangible item, if practicable, or by written notice to
14 the Receiving Party at the time of disclosure, production or filing that such tangible item is, or
15 contains, Confidential Information or Highly Confidential Information. With respect to
16 documents produced in native format and electronically stored information ("ESI"),
17 designation shall be executed in a manner consistent with an ESI Protocol to be entered in this
18 Action.

19 5.4.2 A Designating Party may request a court reporter to separately bind
20 transcript pages containing Confidential or Highly Confidential Information with the
21 appropriate legend ("SUBJECT TO PROTECTIVE ORDER – CONFIDENTIAL
22 (MDL 2777)" or "SUBJECT TO PROTECTIVE ORDER – HIGHLY CONFIDENTIAL
23 (MDL 2777)") affixed to the relevant pages. Any additional court reporter charges for this
24 treatment of the transcript shall be borne by the Designating Party.

25 5.4.3 A Receiving Party shall exercise good faith efforts to ensure that any
26 copies, print-outs of natively produced documents or data, translations, excerpts, summaries, or
27 compilations include a confidentiality legend that matches the confidentiality designation the
28 Designating Party applied to the document, discovery response, transcript, or pleading.

1 5.4.4 *Timing.* Except as otherwise provided herein, documents and other
2 objects must be designated before disclosure or production. In the event that a Producing Party
3 designates some or all of a witness's deposition or other pre-trial testimony (or related
4 exhibits) as Confidential Information or Highly Confidential Information, such designation
5 may be made on the record of the deposition or hearing or within thirty (30) calendar days
6 after receipt of the final transcript of such deposition or hearing. The specific page and line
7 designations over which confidentiality is claimed must be provided to Liaison Counsel within
8 thirty (30) calendar days of receipt of the transcript in final form from the court reporter,
9 provided, however, that Liaison Counsel will consider reasonable requests for an extension of
10 the deadline. Deposition or pre-trial testimony shall be treated as Highly Confidential until the
11 deadline or, if applicable, extended deadline for designation has expired. After the expiration
12 of that period, the transcript shall be treated only as actually designated.

13 5.4.5 Notwithstanding anything to the contrary in this Order, a party may
14 disclose prior deposition testimony to a witness during his or her deposition in accordance with
15 subsection 7.2.1(c) of this Order. Notwithstanding any other provision in this Order,
16 portions of each transcript containing testimony related to a document containing Protected
17 Material of a Non-Party shall be treated as Protected Material. Pages of transcribed deposition
18 testimony or exhibits to depositions that are designated as Protected Material must be
19 separately bound by the court reporter and may not be disclosed to anyone except as permitted
20 under this Order. Counsel shall exclude from depositions any person who is not authorized by
21 the Order to receive Protected Material or anyone who would be authorized but who refuses to
22 sign the Acknowledgement of Understanding and Agreement to Be Bound (Exhibit A), but
23 only during periods of examination or testimony directed to or comprising Protected Material.

24 5.4.6 For information produced in some form other than documentary and for
25 any other tangible items, the Producing Party shall affix in a prominent place on the exterior of
26 the container or containers in which the information or item is stored the legend "SUBJECT
27 TO PROTECTIVE ORDER - CONFIDENTIAL (MDL 2777)" or "SUBJECT TO
28 PROTECTIVE ORDER - HIGHLY CONFIDENTIAL (MDL 2777)." If only a portion or

1 portions of the information or item warrant protection, the Producing Party, to the extent
2 practicable, shall identify the protected portion(s).

3 5.5 Inadvertent Failure to Designate. Accidental or inadvertent disclosure of Protected
4 Material—including Protected Material inadvertently disclosed by failure to redact as set forth in
5 Section 10—does not waive the confidential status of such information or any privilege or other
6 protection attached thereto, provided, however, that a failure to timely designate deposition
7 testimony as required by subsection 5.4.4 of this Order (subject to any agreed extensions), even if
8 inadvertent, waives any protection for deposition testimony, except for deposition testimony
9 related to Non-Party Protected Material as provided in Section 2. In the event that Protected
10 Material is inadvertently disclosed without appropriate designations, any Party or Non-Party may
11 thereafter reasonably assert a claim or designation of confidentiality, and the Producing Party
12 shall promptly provide replacement media. Thereafter, the Receiving Party must promptly return
13 the original information and all copies of the same to the Producing Party, or destroy the original
14 information and all copies, and make no use of such information. In the event that Protected
15 Material is inadvertently disclosed to any person and such disclosure is not permitted by the terms
16 of this Order, the Party making the inadvertent disclosure will make all reasonable efforts to
17 ensure the original and all copies of inadvertently disclosed information are not used and are
18 promptly returned or destroyed. No Party shall be found to have violated this Order for failing to
19 maintain the confidentiality of material during a time when that material has not been designated
20 Protected Material. If a Party identifies a document (not previously marked or identified as
21 Protected Material) that appears on its face or in light of facts known to the Party to contain
22 Protected Material of any person, the party identifying the information is under a good-faith
23 obligation to notify the Producing Party and/or the interested person of the disclosure. Such
24 notification does not waive the identifying Party's ability to subsequently challenge any assertion
25 that the document contains Protected Material. If the Producing Party or other interested person
26 wishes to assert that the document contains Protected Material, it shall provide such notice and
27 replacement copies endorsed in compliance with this Order.
28

1 6. CHALLENGING CONFIDENTIALITY DESIGNATIONS

2 6.1 Timing of Challenges. A challenge to a designation of confidentiality may be
3 made at any time. Unless a prompt challenge to a Designating Party's confidentiality designation
4 is necessary to avoid foreseeable, substantial unfairness, unnecessary economic burdens, or a
5 significant disruption or delay of the litigation, a Party does not waive its right to challenge a
6 confidentiality designation by electing not to mount a challenge promptly after the confidentiality
7 designation is made.

8 6.2 Form of Challenges. The Challenging Party shall object to the propriety of the
9 designation of specific material as Confidential or Highly Confidential by providing written
10 notice to the Designating Party of each designation it is challenging and describing the basis for
11 each challenge. To avoid ambiguity as to whether a challenge has been made, the written notice
12 must recite that the challenge to confidentiality is being made in accordance with this specific
13 subsection of this Order. Subject to subsection 6.4, the Designating Party or its counsel shall
14 thereafter, within fourteen (14) calendar days, respond to such challenge in writing by either:
15 (i) agreeing to remove the designation; or (ii) stating the reasons for such designation. Counsel
16 may agree to reasonable extensions.

17 6.3 Meet and Confer. If the Challenging Party continues to dispute the designation(s)
18 at issue, it shall notify the Designating Party in writing within seven (7) calendar days thereafter.
19 Counsel may agree to reasonable extensions. The Parties shall attempt to resolve each challenge
20 in good faith by conferring directly (in voice-to-voice dialogue; other forms of communication
21 are not sufficient). A Challenging Party may proceed to the next stage of the challenge process
22 only if it has engaged in this meet-and-confer process first or establishes that the Designating
23 Party is unwilling to participate in the meet-and-confer process in a timely manner.

24 6.4 Non-Party Protected Material.

25 6.4.1 If a Party challenges the United States' designation of Non-Party
26 Protected Material submitted prior to the commencement of this Action to the United States
27 pursuant to 40 C.F.R. Part 2, Subpart B, the United States must respond to the challenge within
28 forty-five (45) calendar days. Within fourteen (14) calendar days of the challenge, the United

1 States shall notify or make reasonable efforts to notify the Non-Party. The United States shall
2 not be required to respond to the challenge until fourteen (14) calendar days after having
3 notified the Non-Party. The Non-Party shall be permitted to intervene to defend the
4 designation pursuant to the procedures and standards set forth in this subsection.

5 6.4.2 In the event that a Party is required, by a valid discovery request, to
6 produce a Non-Party's Protected Material in the Party's possession, and the Party is subject to
7 an agreement with the Non-Party not to produce such information, then the Party shall: (1)
8 promptly notify in writing the Party requesting the Protected Material that some or all of the
9 information requested is subject to a confidentiality agreement with a Non-Party; (2) promptly
10 provide the Non-Party with a copy of this Order, the relevant discovery request(s), and a
11 reasonably specific description of the information requested; and (3) make the information
12 requested available for inspection by the Non-Party. If the Non-Party fails to object or seek a
13 protective order from the appropriate court within fourteen (14) calendar days (or the
14 notification period contained in any agreement with a Non-Party, whichever is longer) of
15 receiving a notice and accompanying information pursuant to this subsection, the Receiving
16 Party may produce the Non-Party's Protected Material responsive to the discovery request, and
17 such information shall be produced with the same designation as the one made by the Non-
18 Party.

19 6.4.3 The terms of this Order, including the provisions on challenging
20 confidentiality designations set forth in subsections 6.1–6.3, are applicable to all Protected
21 Material produced by any Non-Party in this Action. Such information produced by Non-
22 Parties in connection with this Action is protected by the remedies and relief provided by this
23 Order. Nothing in these provisions should be construed as prohibiting a Non-Party from
24 seeking additional protections.

25 6.4.4 A Non-Party's use of this Order to designate Protected Material does not
26 entitle that Non-Party to access to any other Protected Material produced by any Party or other
27 Non-Party in this Action.
28

1 6.5 Judicial Intervention. If the Parties cannot resolve a challenge without court
2 intervention, the Challenging Party may move the Court for an order withdrawing the designation
3 as to the specific designations on which the Challenging Party and the Designating Party could
4 not agree, within fourteen (14) calendar days of the Parties agreeing that the meet-and-confer
5 process will not resolve their dispute. Each such motion must be accompanied by a competent
6 declaration affirming that the movant has complied with the meet-and-confer requirements
7 imposed in subsection 6.3.

8 6.6 The burden of persuasion in any such challenge proceeding shall be on the
9 Designating Party. While a challenge is pending, all Parties shall continue to afford the material
10 in question the level of protection to which it is entitled under the Designating Party's designation
11 until the Court orders otherwise.

12 7. ACCESS TO AND DISCLOSURE AND USE OF PROTECTED MATERIAL

13 7.1 Basic Principles. A Receiving Party may use Protected Material that is disclosed
14 or produced by another Party or by a Non-Party in this Action only for prosecuting, defending, or
15 attempting to settle this Action, including any appeal(s), so long as such use is permitted herein,
16 except that (1) the Parties may use information as otherwise authorized by an order of the Court,
17 and (2) the United States may use Protected Material in accordance with the requirements of
18 subsection 11.11. Any Protected Material may be disclosed only to the categories of persons and
19 under the conditions described in this Order. After the final disposition of the Action, a
20 Receiving Party must comply with the provisions of Section 12 below (FINAL DISPOSITION).
21 Protected Material must be stored and maintained by a Receiving Party at a location and in a
22 secure manner that ensures that access is limited to the persons authorized under this Order.

23 7.2 Disclosure of Protected Material. Except as stated in the subsections below, or
24 otherwise ordered by the Court or permitted in writing by the Designating Party, the Parties shall
25 not disclose Protected Material to any other person.

26 7.2.1 Disclosures Pursuant to Signed Exhibit A. The Parties may disclose or
27 permit the disclosure of Protected Material to persons within categories listed below provided
28 that each person signs Exhibit A, "Acknowledgment of Understanding and Agreement to Be

1 Bound.” Counsel for the Party disclosing the Protected Material shall retain all signed
2 acknowledgements for a period of three years after the termination of the litigation, including
3 all appeals, and the acknowledgements need not be produced unless the requesting person
4 establishes prima facie evidence of a violation of this Order.

5 (a) Consultants, investigators, or Experts employed or retained by the
6 Parties or their counsel to assist in the prosecution or defense of claims asserted in
7 this Action;

8 (b) Those persons specifically engaged for the limited purpose of
9 making copies of documents or organizing or processing documents, including
10 Professional Vendors;

11 (c) Potential or actual witnesses in this Action to whom disclosure is
12 reasonably necessary. During their depositions, witnesses in this Action to whom
13 disclosure is reasonably necessary may receive a copy of documents containing
14 Protected Material during the deposition and for the purpose of reviewing their
15 transcript, but may not retain a copy;

16 (d) Mediators and their staff to whom disclosure is reasonably
17 necessary for this Action;

18 (e) Court reporters and their staff, professional jury or trial consultants,
19 mock jurors, and Professional Vendors to whom disclosure is reasonably necessary
20 for this Action; and

21 (f) Outside counsel or counsel for the United States assisting in the
22 prosecution or defense of claims asserted in the Action, but who do not fall within
23 the definition of Counsel. For law firms serving as outside counsel to a Party, a
24 supervising partner may sign Exhibit A on behalf of the firm’s employees and
25 support staff (including, but not limited to, paid or unpaid, temporary or permanent
26 law clerks, paralegals, and administrative or clerical personnel) that are working
27 under his or her direction.
28

1 7.2.2 Disclosures Without Signed Exhibit. The Parties may disclose or permit
2 the disclosure of Protected Material, without the requirement to sign Exhibit A, to persons
3 within categories listed below.

4 (a) The Receiving Party and employees, officers, and directors of that
5 Receiving Party but only to the extent that counsel determines in good faith that
6 the employee's assistance is reasonably necessary to the prosecution or defense of
7 this Action;

8 (b) Counsel;

9 (c) The Court and its personnel, and any appellate court or other court
10 (and their personnel) before which the Parties appear in this Action;

11 (d) The author or recipient of a document containing the information or
12 a custodian or other person who otherwise possessed or knew the information; and

13 (e) Special masters or discovery referees appointed by the Court.

14 7.3 Restrictions on Use of Highly Confidential Information. Unless otherwise ordered
15 by the Court or permitted in writing by the Designating Party, a Receiving Party may disclose
16 Highly Confidential Information only to the persons identified in Sections 7.2.1 and 7.2.2(b)-(e)
17 in accordance with the terms set forth therein, except that disclosure may not be made to a
18 Receiving Party's Expert unless the Expert first signs an undertaking stating that he or she is not
19 currently employed by any Party (excluding any retention for this Action) and that he or she will
20 not use any Protected Materials in connection with any work or services he or she may perform
21 for any entity that directly competes with any of the Defendants in vehicle manufacturing or in
22 the design, programming, or calibration of electronic engine control units or emission control
23 equipment.

24 7.4 Restriction on Disclosure in Actions Outside the United States. Except, with
25 respect to governmental Parties only, as specifically provided in subsection 11.11 or where
26 disclosure is otherwise authorized by United States law, treaty, convention, or international
27 mutual agreement, no Discovery Material shall be disclosed, shared, distributed, or otherwise
28 provided in any manner to legal counsel in pending or threatened litigation against any of the

1 Defendants outside of the United States through any other provision of this Order, regardless of
2 whether such legal counsel can be classified as a consultant or affiliate of any U.S. attorney of
3 record in any legal proceeding against any of the Defendants within the United States.

4 7.5 Control of Documents. Counsel for the Parties shall make reasonable efforts to
5 prevent unauthorized or inadvertent disclosure or use of Protected Material.

6 7.6 Depositions. Counsel for any Designating Party shall have the right to exclude
7 from depositions any person who is not authorized by the Order to receive Protected Material, but
8 only during periods of examination or testimony directed to or comprising Protected Material.

9 8. PROTECTED MATERIAL SUBPOENAED OR ORDERED PRODUCED IN OTHER
10 LITIGATION

11 8.1 If a Receiving Party is served with a subpoena or a court order issued in other
12 litigation that compels disclosure of any Protected Material, the Receiving Party must:

13 8.1.1 Promptly notify in writing the Designating Party unless prohibited by
14 law from doing so. Such notification shall include a copy of the subpoena or court order;

15 8.1.2 Promptly notify in writing the party who caused the subpoena or order
16 to issue in the other litigation that some or all of the material covered by the subpoena or order
17 is subject to this Order. Such notification shall include a copy of this Order; and

18 8.1.3 Cooperate with respect to all reasonable procedures sought to be
19 pursued by the Designating Party whose Protected Material may be affected.

20 8.2 If the Designating Party timely seeks a protective order, the Receiving Party
21 served with the subpoena or court order shall not produce any Protected Material before a
22 determination by the court from which the subpoena or order issued, unless the Party has obtained
23 the Designating Party's written permission. The Designating Party shall bear the burden and
24 expense of seeking protection of its Protected Material, and nothing in these provisions should be
25 construed as authorizing or encouraging a Receiving Party in this Action to disobey a lawful
26 directive from another court.

1 9. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL

2 9.1 If a Receiving Party learns that, by inadvertence or otherwise, it has disclosed
3 Protected Material to any person or in any circumstance not authorized under this Order, the
4 Receiving Party must immediately (a) notify in writing the Producing Party (and, if different, the
5 Designating Party) of the unauthorized disclosures; (b) inform the person or persons to whom
6 unauthorized disclosures were made of all the terms of this Order; and (c) make all reasonable
7 efforts to retrieve all unauthorized copies of the Protected Material.

8 10. REDACTIONS ALLOWED

9 10.1 Any Producing Party may redact from Discovery Material matter that the
10 Producing Party claims is (i) Privileged Material (to be addressed in a separate Order); (ii)
11 Personally Identifiable Information of employees, customers and other third parties; or
12 (iii) Foreign Private Data that must be redacted in accordance with the relevant foreign law(s).
13 The Producing Party shall mark each redaction with a legend stating "REDACTED," and specify
14 the basis for the redaction as appropriate, or a comparable notice. Where a document consists of
15 more than one page, at least each page on which information has been redacted shall be so
16 marked. If counsel for the Producing Party agrees or if the Court orders that Discovery Material
17 initially redacted shall not be subject to redaction or shall receive alternative treatment, and the
18 Discovery Material is subsequently produced in unredacted form, then that unredacted Discovery
19 Material shall continue to receive the protections and treatment afforded to documents bearing the
20 confidentiality designation assigned to it by the Producing Party. Foreign Private Data shall not
21 be redacted from Discovery Material to the extent it directly identifies an individual named as a
22 Party, except by agreement of the Parties or further order of the Court.

23 10.2 The right to challenge and process for challenging the designation of redactions of
24 Foreign Private Data shall be the same as the right to challenge and process for challenging the
25 designation of Confidential Information and Highly Confidential Information as set forth in
26 Section 6.

27 10.3 Nothing herein precludes any Party from redacting entirely nonresponsive highly
28 confidential business information from otherwise responsive documents on a case-by-case basis.

1 The right to challenge and process for challenging the designation of redactions of nonresponsive
2 highly confidential business information shall be the same as the right to challenge and process
3 for challenging the designation of Confidential Information and Highly Confidential Information
4 as set forth in Section 6 above.

5 11. MISCELLANEOUS

6 11.1 Effect of this Order.

7 11.1.1 This Order constitutes a court order within the meaning of 40 C.F.R.
8 § 2.209(d), the Privacy Act, 5 U.S.C. § 552a(b)(11), the Health Insurance Portability and
9 Affordability Act of 1996 (HIPAA) implementing regulations, 45 C.F.R. § 164.512(a),
10 (e)(1)(i), the Trade Secrets Act, 18 U.S.C. § 1905, and the Clean Air Act, 42 U.S.C. § 7542.

11 11.1.2 With respect to the matter covered by this Order (confidentiality), no
12 person may withhold documents, information, or other materials from discovery in this
13 litigation on the ground that they require protection greater than that afforded by this Order,
14 unless that person moves for an order providing such protection.

15 11.1.3 Nothing in this Order may be construed or presented as a final judicial
16 determination that any Protected Material is entitled to protection under Rule 26(c) of the
17 Federal Rules of Civil Procedures or otherwise until such time as the Court may rule on a
18 specific document or issue.

19 11.1.4 Nothing in this Order shall be construed as authorizing or encouraging a
20 Party to disobey a lawful directive from another court.

21 11.2 Documents Requested or Demanded by Non-Parties.

22 11.2.1 If the United States is served with a request under the Freedom of
23 Information Act ("FOIA"), 5 U.S.C. § 552 *et seq.*, or any Party is served with a discovery
24 request or subpoena issued in other litigation, that seeks documents, ESI, or other material
25 designated as Protected Material by another Producing Party, the Party served with the request
26 or subpoena must, within ten (10) business days of determining that the request seeks
27 Protected Material:
28

1 (a) Notify the Producing Party and provide a copy of the request or
2 subpoena; and

3 (b) Inform the person responsible for the FOIA, discovery request or
4 subpoena of this Protective Order and provide that person with a copy of this
5 Protective Order.

6 11.2.2 The Parties shall not produce Protected Material in response to any
7 FOIA, discovery request, subpoena or other request or demand except in compliance with this
8 Order (e.g., with the consent of the Producing Party) or following a decision by the Court
9 removing the designation as Protected Material.

10 11.2.3 Nothing in this Order prohibits a party from filing a motion with the
11 Court seeking modification of this Order to allow the disclosure of Protected Material. Any
12 such motion must be served on the Parties in accordance with the Federal Rules of Civil
13 Procedure and must describe in reasonable detail the proposed disclosure.

14 11.3 Otherwise discoverable information that is protected by the HIPAA implementing
15 regulations shall, in response to a valid discovery request, be designated as “CONFIDENTIAL -
16 SUBJECT TO PROTECTIVE ORDER (MDL 2777)” pursuant to this Order. All such HIPAA-
17 protected records must be destroyed or returned to the United States pursuant to Section 12 and
18 45 C.F.R. § 164.512(e)(1)(v) and may not be used in any related proceeding absent a separate
19 protective order authorizing their disclosure in such proceeding. This subsection does not
20 preclude any Party from challenging that any Discovery Material meets these criteria.

21 11.4 This Order shall not govern the production or designation of classified
22 information, sensitive security information, information on classified computer systems, or
23 enforcement-sensitive government documents and information relating to ongoing criminal
24 investigations. This subsection does not preclude any Party from challenging that any Discovery
25 Material meets these criteria.

26 11.5 Right to Further Relief. Nothing in this Order abridges the right of any person to
27 seek its modification by the Court in the future. Any Party, entity, or person covered by this
28 Order may at any time apply to the Court for relief from any provision of this Order. Subject to

1 the agreement of the Parties or an order of the Court, other entities or persons may be included in
2 this Order by acceding to its provisions in a writing served upon Liaison Counsel, with such
3 writings to be filed with the Court if so directed.

4 11.6 Right to Assert Other Objections. By stipulating to the entry of this Order, no
5 Party waives any right it otherwise would have to object to disclosing or producing any
6 information or item on any ground not addressed in this Order. Similarly, no Party waives any
7 right to object on any ground to use as evidence any of the material covered by this Order.

8 11.7 Filing Protected Material. Without written permission from the Designating Party
9 or a court order secured after appropriate notice to all interested persons, a Party may not file in
10 the public record in this Action any Protected Material. A Party that seeks to file under seal any
11 Protected Material must comply with Civil Local Rule 79-5. Protected Material may only be
12 filed under seal pursuant to a court order authorizing the sealing of the specific Protected Material
13 at issue. Pursuant to Civil Local Rule 79-5, a sealing order will issue only upon a request
14 establishing that the Protected Material at issue is entitled to protection under the law. If a
15 Receiving Party's request to file Protected Material under seal pursuant to Civil Local Rule 79-
16 5(d) is denied by the Court, then the Receiving Party may file the information in the public record
17 pursuant to Civil Local Rule 79-5(e) unless otherwise instructed by the Court.

18 11.8 Hearings and Appeals.

19 11.8.1 In the event that a Receiving Party intends to utilize Protected Material
20 during a pre-trial hearing or a filing, such Receiving Party shall provide written notice no
21 fewer than five (5) calendar days prior to the hearing to the Producing Party and/or the
22 Designating Party and to the Court, except that shorter notice may be provided if the Receiving
23 Party could not reasonably anticipate the need to use the document at a hearing five
24 (5) calendar days in advance, in which event notice shall be given immediately upon
25 identification of that need. The use of such Protected Material during the pre-trial hearing
26 shall be determined by agreement of the relevant Parties or by Order of the Court.

27 11.8.2 In the event that any Protected Material is used in any court proceeding
28 in this Action or any appeal in connection with this Action, except for the use of Protected

1 Material during trial, the manner of which shall be determined pursuant to subsection 3.2, such
2 Protected Material shall not lose its protected status through such use. Counsel shall comply
3 with all applicable local rules and shall confer on such procedures that are necessary to protect
4 the confidentiality of any documents, information, and transcripts used in the course of any
5 court proceedings, including petitioning the Court to close the courtroom.

6 11.9 Reservations. Entering into, agreeing to, or complying with the provisions of this
7 Order shall not: (1) operate as admission that any particular material contains Protected Material;
8 or (2) prejudice any right to seek a determination by the Court (a) whether particular material
9 should be produced, or (b) if produced, whether such material should be subject to the provisions
10 of this Order.

11 11.10 Rights to Inspect Certificates (Exhibit A). Unless otherwise provided herein,
12 except in the event of a good-faith claim of violation of this Order, the Parties agree not to request
13 copies of the certificates (attached hereto in their unexecuted form as Exhibit A) or to determine
14 the identities of the persons signing them.

15 11.11 The Parties agree that Discovery Material may be shared by the United States with
16 any state or federal law enforcement or regulatory agency with jurisdiction over matters related to
17 this Action without limitation, provided that (a) such agency signs the “Agency’s Agreement To
18 Be Bound by Stipulated Protective Order” (Exhibit B) with respect to the particular Discovery
19 Material that may be shared, (b) the United States provides the Producing Party with a copy of
20 such Exhibit B at least 24 hours in advance of sharing the Discovery Material with the agency,
21 and (c) upon request of the Producing Party, the United States provides the Producing Party with
22 information sufficient for the Producing Party to identify the Discovery Material that was
23 provided to each such state or federal law enforcement or regulatory agency. This subsection has
24 no applicability to materials provided to the United States outside of this MDL proceeding.
25 Nothing in this subsection precludes any state or federal law enforcement or regulatory agency
26 that receives Discovery Material pursuant to this subsection from using that material in
27 accordance with the agency’s applicable statutes, rules and regulations, or from seeking materials
28 or information outside of this MDL proceeding pursuant to applicable law.

1 12. FINAL DISPOSITION

2 12.1 Order Continues in Force. Unless otherwise agreed or ordered, this Order will
3 remain in force after dismissal or entry of final judgment not subject to further appeal.

4 12.2 Obligations at Conclusion of Litigation. Within ninety (90) calendar days after the
5 final disposition of this Action, as defined in Section 4, each Receiving Party, including its
6 employees, attorneys, consultants and experts, must use commercially reasonable efforts to
7 destroy or return to the Producing Party all Protected Material, except (1) backup tapes or other
8 disaster recovery systems that are routinely deleted or written over in accordance with an
9 established routine system maintenance practice, or (2) documents that the United States
10 Environmental Protection Agency believes are required to be preserved either as part of its
11 federal records or pursuant to other statutory, regulatory or legal authorities. As used in this
12 subsection, "all Protected Material" includes all originals, copies, abstracts, compilations,
13 summaries, and any other format reproducing or capturing any of the Protected Material.
14 Whether the Protected Material is returned or destroyed, upon request of the Producing Party or
15 Designating Party, each Receiving Party except for EPA must submit a written certification to the
16 Producing Party (and, if not the same person or entity, to the Designating Party) by the 90-day
17 deadline that states that the Receiving Party has complied with this Section 12.2.
18 Notwithstanding this provision, Counsel are entitled to retain an archival copy of all pleadings,
19 motion papers, trial, deposition, and hearing transcripts, legal memoranda, correspondence,
20 deposition and trial exhibits, expert reports, attorney work product (including all emails attaching
21 or referring to Protected Materials), and consultant and expert work product, even if such
22 materials contain Protected Material. Any such archival copies that contain or constitute
23 Protected Material remain subject to this Order as set forth in Section 4 (DURATION).

24 **IT IS SO STIPULATED, THROUGH COUNSEL OF RECORD.**
25
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27
28

1 Dated: August 30, 2017

Respectfully submitted,

2 LIEFF CABRASER HEIMANN & BERNSTEIN, LLP

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4 Elizabeth J. Cabraser

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Plaintiffs' Lead Counsel and Chair of the Plaintiffs' Steering Committee

10 Dated: August 30, 2017

SULLIVAN & CROMWELL LLP

11 By: /s/ Robert J. Giuffra, Jr.

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13 Robert J. Giuffra, Jr.
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*Counsel for Fiat Chrysler Automobiles N.V.,
FCA US LLC, V.M. Motori S.p.A., and V.M.
North America, Inc.*

24 Dated: August 30, 2017

CLEARY GOTTlieb STEEN & HAMILTON LLP

25 By: /s/ Matthew D. Slater

26 Matthew D. Slater

27 Cleary Gottlieb Steen & Hamilton LLP
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Facsimile: (202) 974-1999
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Counsel for Robert Bosch LLC

1 Dated: August 30, 2017

U.S. DEPARTMENT OF JUSTICE

2 By: /s/ Leigh P. Rendé
Leigh P. Rendé

3 United States Department of Justice
4 Environment and Natural Resources Division
5 Environmental Enforcement Section
6 P.O. Box 7611, Ben Franklin Station
7 Washington, DC 20044-7611
8 Telephone: (202) 514-1461
leigh.rende@usdoj.gov

Government Coordinating Counsel

9
10 **ATTESTATION (CIVIL LOCAL RULE 5-1(i)(3))**

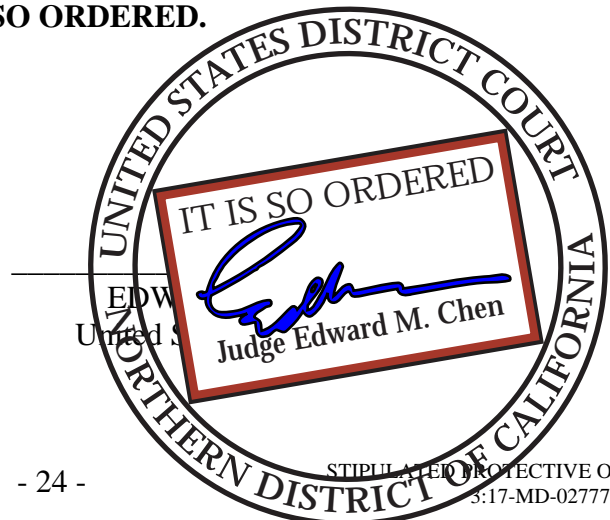
11 In accordance with Civil Local Rule 5-1(i)(3), I attest the concurrence in the filing of this
12 document has been obtained from the signatories.

13 Dated: August 30, 2017

/s/ Elizabeth J. Cabraser
Elizabeth J. Cabraser

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22 **PURSUANT TO STIPULATION, IT IS SO ORDERED.**

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24 Dated: August 31, 2017



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/s/ Elizabeth J. Cabraser
Elizabeth J. Cabraser

1 EXHIBIT A

2 ACKNOWLEDGMENT AND AGREEMENT TO BE BOUND

3 I, _____ [print or type full name], of _____
4 [print or type full address], declare under penalty of perjury that I have read in its entirety and
5 understand the Stipulated Protective Order that was issued by the United States District Court for
6 the Northern District of California in the case *In re Chrysler-Dodge-Jeep Ecodiesel Marketing,*
7 *Sales Practices, and Products Liability Litigation*, MDL No. 2777. I agree to comply with and to
8 be bound by all the terms of this Stipulated Protective Order, and any further orders of the Court
9 providing for the treatment of Protected Material or materials protected or claimed to be protected
10 by privilege or work product, and I understand and acknowledge that failure to so comply could
11 expose me to sanctions and punishment in the nature of contempt. I solemnly promise that I will
12 not disclose in any manner any information or item that is subject to this Stipulated Protective
13 Order to any person or entity except in strict compliance with the provisions of this Order.

14 I further agree to submit to the jurisdiction of the United States District Court for the
15 Northern District of California for the purpose of enforcing the terms of this Stipulated Protective
16 Order, even if such enforcement proceedings occur after termination of this Action.

17
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19 Date: _____

20 City and State where sworn and signed: _____

21
22 Printed name: _____

23
24 Signature: _____

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EXHIBIT B

AGENCY'S AGREEMENT TO BE BOUND BY STIPULATED PROTECTIVE ORDER

The United States may share Discovery Material produced or provided by
_____ [print or type name of Producing Party] with
_____ [print or type name of agency].

In the event the United States does so, _____ [print or type
name of agency] agrees to be bound by the terms of the Stipulated Protective Order that was
issued by the United States District Court for the Northern District of California in the case *In re*
Chrysler-Dodge-Jeep Ecodiesel Marketing, Sales Practices, and Products Liability Litigation,
MDL No. 2777, and any further orders of the Court providing for the treatment of Protected
Material or materials protected or claimed to be protected by privilege or work product, to the
fullest extent permitted by law.

Date: _____

City and State where sworn and signed: _____

Printed name: _____

Signature: _____

On Behalf of: _____